IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR.

**

J U D G M E N T

Swaika Properties Pvt. Ltd. And anr. Vs. State of Raj. & ors.

S.B.CIVIL WRIT PETITION NO.2911/1989

Date of Judgment : January 23rd, 2006.

P R E S E N T

REPORTABLE

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. R.K.Agarwal, for the petitioner.
Mr. Bharat Vyas, AAG, for J.D.A.
Mr. B.L.Awasthi, Addl. G.A. for State.
Mr.G.L.Pareek, Sr.Adv. with Mr.Ashwani Chobisa, for applicant-intervenor.

BY THE COURT:

By this writ petition, petitioner No.1, Sawaika Property Private Limited, a private limited company registered under the Companies Act, 1956 in Calcutta and petitioner No.2, Chairman of the Company, has challenged the land acquisition proceedings under the Rajasthan Urban Improvement Act, 1959 in respect of its land

measuring 37038.5 sq. mtrs equivalent to 14 Bighas and 16 Bishwas situated at village Madrampura, Tehsil Jaipur which is now as a matter of fact in the heart of capital city of Rajasthan and its area is adjoining the Civil Lines just behind Ministers' Bungalows.

2. The case set up by the petitioner company is that the proceedings for acquisition of land in question was initiated by a notice under section 52(2) of the Rajasthan Urban Improvement Act, 1959 (hereinafter referred as "the Act of 1959") vide Annex. 1 dated 25.6.1975. By the said notice under section 52(2) of the Act, the preamble of which read as "because the under noted land is desired to be acquired for improvement and purpose of development of Jaipur Town and extension of Civil Lines area for construction of building" and in the body of the said notice the description of the land in question was given. Another notice dated 23.8.1975 was issued by the same authority

namely; Special Officer of Town Planning Department, Jaipur which was addressed to the petitioner's company at Calcutta address and the same was also purported to have been issued under section 52(2) of the Act calling upon the petitioner company to show cause within 20 days as to why the said land in question be not acquired for the aforesaid purpose.

3. According to the petitioner, the alleged purpose of acquisition in the said notice was shown to be slightly different than the one shown in the first notice Annex.1 and now in Annex.2, the purpose of acquisition was stated to be "improvement of the land in question or for extension of Civil Line and house building scheme in the Jaipur" the land was sought to be acquired. The petitioner company filed its objections in response to the said show cause notice vide Annex 3 dated 8.9.75 challenging the said acquisition and referring to certain family disputes between the brothers of the said family

which owned the petitioner No.1 company, the company stated that the company was contemplating to expand its business activities in Rajasthan and company applied for industrial licence and have also intention to open their branch office at Jaipur and for constructions of office building and residential quarters for the Directors and other senior executives, they would require the said land in question . Thereafter the petitioner company constantly made representations before different authorities of the State Government against the said acquisition proceedings and vide Annex.4 dated 20.3.76 the petitioner company came up with a proposal to set up a three star hotel on the said land in question by paying the necessary conversion charges which was also favourably recommended by the Director of Tourism. The petitioner company also contends that vide Annex 7 dated 8.2.1982 they have tied up with the Welcome Group for setting up of 5-Star hotel and therefore the competent authority had

recommended its case for exemption from the Urban Ceiling Law. While this was going on, by the impugned notice issued under section 52(5) of the Act on 18.2.1984, the Land Acquisition Officer asked the petitioner company to hand over the possession of the land in question within 30 days failing which forcible possession would be taken within the power under section 52(6) of the Act.

4. By a notification in the Official Gazette published on 8.2.1984 issued under section 52(1) of the Act, the final declaration was notified by the State Government under the orders of the Governor for acquisition of the land in question in Khasra No. 383 of village Madrampura admeasuring 14 Bighas 16 Bishwas for the purposes of improvement or urban development in the city as stated in the said notification. At this point of time, the petitioner preferred a writ petition before the Calcutta High Court challenging the said acquisition proceedings where, it is stated by the petitioner company

that an injunction order was also issued by the Calcutta High Court in its favour. However upon the Special Leave Petition filed by the State Government against such injunction order, the Hon'ble Supreme Court held in State of Rajasthan V/s Swaika Properties reported in AIR 1985 SC, 1289 that Calcutta High Court had no territorial jurisdiction to entertain such writ petition at the instance of the petitioner company for the acquisition of land in Jaipur.

5. Thereafter the petitioner company filed a writ petition in Rajashan High Court at Jaipur Bench being Writ Petition No.1507/87 which was also dismissed as withdrawn with liberty to file fresh writ petition on 10.3.89. Just prior to that, the petitioner filed the present writ petition on 5.7.89 which after remaining pending for all these years, could be finally heard, over a period of three days, in the second week of January, 2006 and it is being disposed of by this judgment.

6. Shri R.K. Agrawal, learned counsel appearing for the petitioner vehemently urged before this court that the land acquisition in question is bad in law and is illegal for a variety of reasons, the important of them being (i) that there was no purpose much less a genuine public purpose behind the acquisition of land in question. (ii) that due process of law as per the procedure prescribed under the Act has not been followed and therefore the land acquisition in question has to fail, (iii) that there was gross delay on the part of the State Government in undertaking and completing the land acquisition proceedings in question as the proceedings which were started on 25.6.1975 vide notice under section 52(2) of the Act and the final declaration in respect of the same was issued only on 8.2.1984 vide Annex 12 and therefore after about lapse of 9 years since the Government had sat over the matter, the delay is fatal and therefore all the proceedings deserves to be quashed, (iv) that since after extending

the Central Land Acquisition Act, 1894 to the State of Rajasthan w.e.f. 27.9.1984, since the award was not passed within a period of two years in the present case, the proceedings were rendered void and deserves to be quashed on that ground.

7. This last argument was also emphasised by Shri G.L.Pareek, learned Senior Counsel appearing for applicant M/s Ashirwad Real Estate Pvt. Ltd. who had applied to intervene in the matter on the basis of a Memorandum of Understanding dt. 14.10.1996 between the petitioner company and the applicant company to develop the land in question and to pursue the litigation and also to make efforts for de-acquisition for the land in question. However, it appears that these two parties also fell apart during the course of time as the petitioner company claimed that the applicant company was to complete the purported exercise before 31.3.1997 and since it had failed to do so, the period of

alleged Memorandum of Understanding lapsed and therefore the petitioner company opposed the application seeking intervention in the present writ petition filed by the said applicant company. Shri G.L. Pareek fairly submitted that the inter se dispute between the parties cannot be made subject matter of this writ petition but however since it had interest in the land in question and the present dispute, he should be allowed to make submissions in support of the petitioner company against the land acquisition in question which he was allowed. Therefore, the court without going into inter se dispute between the parties, only allowed Shri G.L. Pareek to make submissions to the extent of challenge to the land acquisition in question and in this context, he made the submissions on the last point as enumerated above on the strength of a Division Bench judgment of this court in the case of Bishwambar Dayal and others V/s State of Rajasthan reported in 1991(1) WLC 686 by which judgment section 60(A)(3) of the UIT Act was

found to be repugnant to the provisions of section 11-A of the Central Land Acquisition Act, 1894. However the State Government after the pronouncement of the said judgment on 23.1.89 enacted an amendment and validation law in the form of of Rajasthan Urban Improvement (Amendment and Validation) Act, 1990 which received the assent of President and thus, the defect pointed out by the Division Bench was cured and thereafter the matter came up before the Hon'ble Supreme Court in the case of Pratap V/s State of Rajasthan (1996)(3) SCC 1) which answered completely the contentions raised by the petitioner to the extent of applicability of Central Land Acquisition Act to the State of Rajasthan which would be dealt with hereinafter.

8. Up against the said arguments of the learned counsel for the petitioner, Shri Bharat Vyas learned counsel appearing for the respondent No.2, Jaipur Development Authority which stepped into the shoes of Urban Improvement Trust after

coming into force of J.D.A. Act 1980 and who also happens to be Additional Advocate General for the State of Rajasthan and therefore, his arguments were adopted by Shri B.L. Awasthi, learned counsel appearing for the State of Rajasthan also, vehemently urged before the court, taking the court through the various case laws, that the writ petition filed by the petitioner company is misconceived and deserves to be dismissed. He submitted that (i) the land acquisition proceedings in questions are perfectly valid and in accordance with law, (ii) that there was no delay on the part of the State Government in the land acquisition proceedings in question and he contended that on the other hand, the petitioner itself was guilty in delaying those proceedings from 1975 to 1984 by making various representations objecting to the land acquisition proceedings thereby tremendously increasing the costs of development of the said land in question now (iii) that there was genuine and valid public purpose behind acquisition of the land in

question and (iv) that there was no malafides, either the malice-in-fact or malice-in-law (v) that the procedure prescribed in law was duly and punctually followed (vi) that Award having been passed in the matter and that being not under challenge in the present writ petition; therefore the petitioner has acquiesced in the matter and that against the said award the petitioner is already pursuing Reference application seeking enhancement of awarded compensation before the Reference Court thereby disentitling itself to any relief in the present writ petition and lastly (vii) that conduct of the petitioner company in dealing with the said land by entering into the aforesaid memorandum of understanding with a third party M/s Ashirwad Real Estate, after issuance of the notice under section 52(2) of the Act and after final declaration u/s 52(1) of the Act on 8.2.1984; This conduct of the petitioner company being illegal and contumacious, the petitioner's writ petition deserves to be dismissed with costs.

9. Having given my careful thought and consideration to the provisions of statute, arguments of the learned counsel and relevant case laws, I proceed to deal with the contentions raised on behalf of the petitioner first.

10. Learned counsel for the petitioner first contended that there was no public purpose behind the land acquisition in question, and no such public purpose is made out from the impugned notice under Sec. 52(1) of the Act, or even from the final declaration in the form of notification dated 8.2.84 issued under Sec. 52(1) of the Act. The different mentioning of so-called public purpose in the impugned notices under Sec.52(2) and notification under Sec. 52(1) itself making it clear that the State Government had no public purpose in mind while undertaking the land acquisition in question, and sometimes it mentioned 'extension of civil lines' as the purpose in another notice, it mentioned 'house

building scheme', and in the final notification, the 'improvement and development of Jaipur Town' which is as vague as it could be and, therefore, the land acquisition in question was bad in law and on facts. Elaborating further his arguments, he submitted that no formal scheme under Sec. 32 of the Act was in fact formulated muss less published, against which proper and valid objection could be raised by the petitioner company. He invited the attention of the court towards the provisions of Sec.29 to 41 in Chapter-V of the Act relating to framing of Scheme, and on the conjoint reading of these provisions, he submitted that unless the time frame as stipulated in these provisions particularly in Sec. 32 of the Act is followed, no land acquisition can be undertaken, and since such a scheme was not notified or published in the present case, the land acquisition in question must fail.

11. He further contended that in 1977, for a

smaller part of land of about 14 Biswas was acquired by the State Government under the provisions of Rajasthan Land Acquisition Act, 1953 for Public Works Department and the acquisition proceedings with respect to that smaller part of land were completed within one year itself ; whereas in the present case, for the land in dispute, the State Government caused enormous delay of about 9 years in finalising the so-called public purpose of making a declaration to that effect on 8.2.84. While he admitted that both the laws hold their respective fields, and either of them could be invoked by the State Government for undertaking the land acquisition, the promptitude with which the land acquisition of smaller part was completed as against the gross delay for the land in question, clearly showed that the State Government was not at all serious about the land acquisition of the land in question and, therefore, on this ground alone, land acquisition in question deserves to be quashed.

12. Making good his submission, along with Mr.Pareek as to the applicability of the Central Acquisition Law, he submitted that there was no question of any acquiescence on the part of petitioner as far as his not challenging the Award passed for the land in dispute in the present writ petition nor making of a reference application seeking enhancement of the compensation before the Reference Court could amount to any sort of estopple against the petitioner company and the challenge to the land acquisition in the present writ petition survived notwithstanding the same. As far as the Award, not having been passed within the limitation and, therefore, the contention of land acquisition falling on that count, was emphasized more by the applicant-intervenor through Mr.Pareek, rather than the petitioner company.

13. Learned counsel for the petitioner relied upon the following judgments in support of his submissions. In Hindustan Petroleum

Corporation Ltd. Vs. Darius Shapur Chennai & ors. Reported in JT 2005 (8) SC,470, the Hon'ble Supreme Court has held that declaration under Sec. 6(3) of the Land Acquisition Act, 1894 was the conclusive evidence of the public purpose behind the land acquisition, but when the decision making process itself is in question, the power of judicial review can be exercised by the Court in the evnet the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power, it must be done in a fair and reasonable manner. The court further held that the consideration of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision making process, the court in order to satisfy itself as to whether one or more grounds for judicial review

exists, may call for the records whereupon such records must be produced. The court however ultimately dismissed the appeal of the appellant finding that in this case, court was not required to go into the question of malice either in-fact or in-law or the question of colourable exercise of power by the State Government or any other statutory authority.

14. Learned counsel for the petitioner further relied upon the Judgment of Hon'ble Supreme Court rendered in M/s. Girnar Traders Vs. State of Maharashtra and ors. reported in [2005 (1) Civil LJ,898] where the State Government issued the notification under Sec. 126(4) of the Maharashtra Regional and Town Planning Act, 1966 (for short as "MRTP Act") read with Sec.6 of the Land Acquisition Act, 1894. The Hon'ble Supreme Court on a different issue held that there was no good reason as to why the provisions introduced in the Land Acquisition Act, 1894, should not be read into an acquisition under Chapter VII of the

MRTP Act, to the extent not precluded for MRTP Act, 1966 and, therefore, it was held that decision in Sant Joginder Singh's case[1995 Supp. (2) SCC,475] required reconsideration by a larger Bench. The third Judgment relied upon by the petitioner's side was in the case of Nahar Singh Vs. State of U.P. and ors. [(1996) 1 SCC,434] wherein in a short order, mainly on a resolution of Gram Sabha, that the other land has already been allotted to 30 eligible persons of the village and the land in question no longer is necessary, the Hon'ble Supreme Court held that after the Amendment Act 68 of 1984 was brought into force w.e.f. 24.9.1984, Section 11-A operates in the field. It envisages that if the award under Section 11 has not been made within two years from the date of coming into force of the Amendment Act, all the proceedings under Sections 4 and 6 shall stand lapsed. In view of the fact that no steps appeared to have been taken within time, the notification under Section 4(1) and declaration under Section 6 no longer

subsist. The learned counsel for the petitioner also relied upon Judgment of Hon'ble Supreme Court in State of U.P. And ors. Vs. Rajiv Gupta and anr. reported in [(1994)5 SCC,686].

With respects, it appears that none of the Judgment cited on the side of petitioner, carry the case of petitioner further.

15. That last two cases of Nahar singh (supra) and Rajiv Gupta (supra) turn on their own facts, and in the present case, the Award passed for the acquisition of land in question, is not even under challenge before this court, therefore, the said cases have no application. The case of M/s. Girnar Traders in which a reference has been made to Larger Bench, was about the applicability of Central Law along with Local State Law for land acquisition in question, and since the notification was issued in exercise of powers under both the enactments simultaneously, the question of applying the Central Law arose and that is not the case here.

So also the Judgment in the case of Hindustan Petroleum Corporation (supra) is of no assistance to the petitioner as in the present case, not only the record was produced before the court for satisfying the court about the public purpose behind the land acquisition in question, but the same also does not appear to be suffering from any illegality, irrationality or procedural impropriety.

16. As against this, Mr.Bharat Vyas, AAG, learned counsel appearing for the respondent JDA contended before the court that a bare perusal of definition of word 'improvement' as defined in Sec.2(1)(vi) of the Act of 1959 would show that the public purpose laid down in the impugned notice and final declaration was covered by the said term. The word 'improvement' is defined as under:

> **“2(1)(vi): “improvement” with its grammatical variations means the carrying out of**

building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land [or making provision for any amenity in, on, over or under any building or land] and includes re-improvement;”

17. Learned counsel for the respondents further submitted that though a Scheme under Sec. 32 for extension of Civil Lines was made by the Urban Improvement Trust in the present case on 15.3.1975 and a notification to that effect was also issued on 2.8.1975. However, he submitted that irrespective of that, once the public purpose of extension of civil lines was mentioned in the notice under Sec. 52(2) of the Act (Annex.1) dated 25.6.1975, that was enough and it was not incumbent upon the State Government to give the details of the entire Scheme in the said notice or even in the final declaration under Sec. 52(1) of the Act which is equivalent to Sec.6 of the Central Land Acquisition Act, 1894.

Relying on the Judgment of Hon'ble Supreme Court in the case of Northern Indian Glass Industries Vs. Jaswant Singh and ors. [(2003) 1 SCC,335], he contended that even a change of purpose or Scheme after the acquisition, was permissible and the owner of land has no right to ask for revesting the land in him, if such purpose was changed lateron. He contended that once the vesting of land took place by virtue of Sec.52(4) of the Act upon issuing the declaration under Sec. 52(1) of the Act on 8.2.84, the land in question vested absolutely in the State Government free from encumbrance and the owner of the land could only ask for compensation in lieu of such acquisition. He submitted that possession of the land in question was also taken in the present case on 17.2.87 and the Award was made in the present case on 26.6.89 which was published after approval by the State Government on 29.7.89, and the petitioner had already filed Reference No.1319 in the Civil Court on 23.10.89. He submitted that since the Award was not under

challenge in the present writ petition and said subsequent development was not brought under challenge in the present writ petition, the writ petition had become infructuous as a matter of fact.

He submitted that in fact the objections of the petitioner company were considered and decided by the Land Acquisition Officer on 29.4.76, who made his report to the State Government recommending acquisition of land in question for the aforesaid public purpose and representations and objections made by the petitioner company thereafter through the years upto 1984 and even thereafter clearly showed malafides on the part of the petitioner company who only should be held responsible for delay, if any, in finalizing the said land acquisition upto 1984 when the declaration was issued under Sec. 52(1) of the Act on 8.2.84. He also brought to the notice of the court that mere fact that petitioner company dealt with such land in question by admittedly entering into the

Memorandum of Understanding with the applicant-intervener M/s. Ashirwad Real Estate showed that the petitioner company had scant regard for the legal land acquisition proceedings undertaken by the State Government which prohibited in such dealing in the land under acquisition by the Land Owners.

18. Drawing the attention of the court towards the decision of Hon'ble Supreme Court in the case of Gandhi Grah Nirman Sahkari Samiti Ltd. Vs. State of Rajasthan and ors. [1993(2) SCC,662], he submitted that taking a decision regarding the acquisition of land for the purpose of improvement or for any other purpose under this Act was sufficient, and it was not necessary for the State Government to frame a detailed Scheme or Development Plan before exercising the powers under the provisions of Sec.52 of the Urban Improvement Trust Act, 1959. The Hon'ble Supreme Court in that case had held in para no.10 that it is sufficient if a decision in this

respect is taken and the detailed Scheme is left to be worked out at the stage of execution of plan. The notification issued by the State Government under sub-section (1) of Sec.52 of the Act in that case stated that the land was being acquired for the construction of residential, commercial and administrative buildings. The Government having taken a policy decision to acquire land for public purpose, was justified in issuing the notification under Sec. 52(1) of the Act in respect of land in dispute.

19. Learned counsel for the petitioner seeking to distinguish this case submitted that in that case, area to be acquired from village Bhojpura to Bhawanipura was 322 Bighas and 8 Biswas, and the total area acquired from village Hathroi, the residencial area, was 65 Bighas and 16 Biswas; whereas in the present case, land in question was only 14 Bighas and 16 Biswas.

20. In the considered opinion of the court,

this distinction is hardly a distinction making any effect on applying the law declared by the Hon'ble Supreme Court in different manner. Therefore, the said contention of the petitioner deserves to be rejected.

21. Sh.Vyas, learned counsel for the respondents also vehemently submitted that the decision of Hon'ble Supreme Court in the case of Pratap and anr. Vs. State of Rajasthan and ors. [(1996) 3 SCC,1 after the Amendment of Act of 1959 by Rajasthan Urban Improvement (Amendment and Validation) Act, 1990 dealing with a publication of notification under Sec. 52(1) of the same Act answers almost all the contentions raised on behalf of the petitioner. He drew my attention towards para nos. 12 to 16 of the said Judgment and it would be apposite to reproduce the said paras in extenso here-under:

> **“12. The provisions of sub-section (4) of Section 52 are somewhat similar to Section 17 of the Land Acquisition**

Act, 1894. Just as publication of a notification under Section 52(1) vests the land in the State, free from all encumbrances, as provided by Section 52 (4), similarly when possession of land is taken under Section 17(1) the land vests absolutely in the Government free from all encumbrances. A question arose before this Court that if there is a non-compliance with the provisions of Section 5-A and an award is not made in respect to the land so acquired, would the acquisition proceedings lapse. In Satendra Prasad Jain Vs. State of U.P. this Court held that once possession had been taken under Section 17(1) and the land vested in the Government then the Government could not withdraw from acquisition under Section 48 and the provisions of Section 11-A were not failure to make an award within the period prescribed therein. It was further held that non-compliance of Section 17(3-A), regarding part payment of compensation before taking possession, would also not render the possession illegal and entitle the Government to withdraw from acquisition. The aforesaid principle has been reiterated by this Court in

P.Chinnanna Vs. State of A.P. And Awadh Bihari Yadav Vs. State of Bihar. In view of the aforesaid ratio it follows that the provisions of Section 11-A are not attracted in the present case and even if it be assumed that the award has not been passed within the stipulated period, the acquisition of land does not come to an end.

13. It was also contended by the learned counsel for the respondents that the State had complied with all the legal requirements in the present case. Our attention was drawn to Section 60-A of the Amending Act and the Validating Act and it was submitted, and in our opinion rightly, that sub-section (3) of the Amending Act and sub-section (4) of the Validating Act only required the making of the award and payment of money within the period stipulated therein. The facts narrated hereinabove shows that this was done. In any case non-compliance with the provisions of this sub-section will not in any way affect the vdesting of the land which has already taken place with the publication of the

notification dated 20.4.84. The provisions of sub-section (4) of Section 60-A of the Validating Act are analogous to Section 17-A of the Land Acquisition Act and as held in the aforesaid decisions of this court non-compliance with the said provisions will not be in any way amount to the de-vesting of acquisition which has taken place or the acquisition proceedings having lapsed.

14. There is also no merit in the contention of the learned counsel for the appellants that the decision of the Division Bench of the Rajasthan High Court rendered in 1993 in Narain case can in any way affect the present proceedings. Firstly, the said decision of the Division Bench of the Rajasthan High Court is not final because the Special Leave Petitions Nos. 3100-3127 of 1994 have been filed and the same are pending in this Court; secondly this decision has not been approved by a Full Bench of the Rajasthan High Court in its judgment dated 1.11.1995 in Urban Improvement Trust Vs. State of Rajasthan and the other connected cases. In this

judgment, dealing with Narain case, the Full Bench observed as follows:

"The Division Bench of this court in the case Narain Vs. State or Rajasthan, has held that the acquisition proceedings cannot be taken in the absence of sanctioned notified scheme. This view has been taken by interpreting only para 9 of the Supreme Court decision of Gandhi Grah Nirman Sahkari Samiti Ltd. Case to the facts and circumstances of the case before the Division Bench. Consideration of paras 8 and 11 of the Supreme Court decision does not find place in the decision of the Division Bench. As stated above, the combined effect of paras 8,9 and 11 of the Supreme Court decision seems to be otherwise. With utmost respect, it is difficult to agree with the observatiosn made and view expressed by the Division Bench in the case of Narain as regards the decision of the Supreme Court in the case of Gandhi Grah Nirman Sahkari Samiti Ltd."

It is indeed unfortunate that the judgment of the Division Bench in

Narain case was relied on, when the same had been overruled by the Full Bench of that Court without referring to the Full Bench decision. Furthermore even on merits we find that the said decision of the Division Bench of the Rajasthan High Court in Narain case does not lay down the correct law and the later decision of the Full Bench is correctly decided. The contention which was raised before the High court, and it succeeded, in Narain case was that there could be no proceedings for acquisition which do not conform with the provisions of the master plan inasmuch as the master plan shows one particular use for the land in question, the said land could not be acquired for a different purpose. It was further contended that without framing of a scheme land could not be acquired under Section 52 of the said Act. In upholding this contention the High Court placed reliance on the two Judge Bench decision of this Court in State of T.N. Vs. A.Mohd. Yousef.

15. Decision of this Court in Gandhi Grah Nirman Sahkari Samiti Ltd. Vs. State of Rajasthan also considered a

similar question pertaining to the Rajasthan Urban Improvement Act, 1959 itself. It had been contended that land could not be acquired under Section 52 of the Act unless and until there was a scheme for improvement of the urban area under the Rajasthan Urban Improvement Act, 1959. Rejecting this contention, this court observed as follows: (SCC p.668, para 9)

> **“The crux of the argument is that the improvement in the urban area can only be carried out by executing the schemes framed under the Act and in no other way, we do not agree with Mr.Shanti Bhushan. Under the scheme of the Act the improvement of the urban area can be undertaken by the Trust and also by any of the departments of the Government. The framing of the scheme becomes mandatory only when the work is undertaken by the Trust. The State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would not be necessary**

for the Government to have a scheme framed under Chapter V of the Act. The power of the State Government to acquire land under the Act has been designed to meet the scheme of the Act. Under Section 52 of the Act the land can be acquired by the State Government at the instance of the Trust, or a department of the Government or any prescribed authority. The plain language of Section 52 (1) of the Act negates the contention raised by Mr.Shanti Bhushan. Whereon a representation from the Trust or otherwise it appears to be the State Government that any land is required for the purpose of improvement or for any other purpose under the Act it can acquire such land by issuing a notification under Section 52(1) of the Act. It is, thus, clear that the State Government has the power to acquire land either for the execution of the

schemes framed by the Trust under Chapter V of the Act or for any other public purpose under the Act. No fault can be found with the procedure followed by the State Government in this case. The notification issued by the State Government under sub-section (1) of Section 52 of the Act specifically states that the land was being acquired for the construction of residential, commercial and administrative buildings. The Government—having taken a policy decision to acquire land for the public purpose--was justified in issuing the notification under Section 52 (1) of the Act in respect of the land in dispute."

16. The effect of this is that even if there is no scheme prepared or finalised, under a Housing Board or Urban Improvement Act, acquisition could be validly made under the provisions of the Land Acquisition Act for a public purpose or under the Rajasthan Urban Improvement Act for the

purpose of improvement or for any other purpose under the Act. The decision relating to the Rajasthan Act is directly on the point. The other decision under the Tamil Nadu Act does not, therefore, require any further discussion."

22. Respectfully following the ratio of aforesaid decision of Hon'ble Supreme Court, the contention of the petitioner as to lapsing of the land acquisition proceedings in the present case deserves to be dismissed and same is accordingly dismissed.

23. About the contention of absence of public purpose, learned counsel for respondents vehemently urged that the extension of civil lines by construction of Government buildings was well conceived public purpose and the petitioner is not entitled to put his private business purpose as a front against the said public purpose to challenge the land acquisition in question. He relied upon the Judgments of Hon'ble

Supreme Court in the case of Aflatoon Vs. Lt.Governor, Delhi [AIR 1974 Sc,2077]; Ramjas Foundation Vs. Union of India [AIR 1993 SC,852]; Larsen & Toubr Ltd. Vs. State of Gujarat and ors. [AIR 1998 (4) SCC,387]; Chain Singh Vs. State of Rajasthan and ors. [RLR 1989 (2), 725]; Babu Singh Vs. Union of India [1981 (3) SCC,628], and submitted that there was no delay on the part of the State Government in finalizing the land acquisition in question and it is not open to the petitioner to challenge the same on the ground of delay and in fact the petitioner only had caused the so-called delay of 9 years by constantly making representations about his private business purpose of coming up with 3-Star and 5-Star hotel in the said land in question etc. Further contention that once the land vests in the Government with the publication or declaration under Sec. 52(1) of the Act, same cannot be divested. Learned counsel for the petitioner relied upon Pratap Vs. State [(1996) 3 SCC,01] (supra), Awadh Bihari Yadav Ss. State of Bihar

[(1995)6 SCC,31], Allahabad Development Authority Vs. Nasirruddin [(1996)8 JT, 429] and Satyendra Vs. State of U.P. [(1993)4 SCC,369].

24. This court finds considerable force in the various contentions and arguments raised on behalf of respondents and this writ petition must fail. Not only this, there was a valid and genuine public purpose behind initiating the land acquisition proceedings in question namely extension of civil lines and construction of buildings thereon. The said purpose is not only clearly spelt out in the impugned notice under Sec. 52(1) of the Act, but also in the declaration under Sec. 52(1) of the Act. The minor change of a word here or there in these notices or notification is of hardly any avail to the petitioner and the court is not supposed to undertake hair splitting exercise in such a matter and strike down the land acquisition proceedings for public purpose on such technical reasons. The delay between 1975 to 1984 is

explained by the various representations and objections filed by the petitioner itself and it is very clear that the petitioner could stall the finalization of declaration under Sec. 52(1) of the Act upto 1984 though the report of the land acquisition officer recommending the land acquisition while deciding the initial objections of the petitioner company was given way back on 29.4.76. The State Government cannot be faulted and cannot be said to have slept over the matter between 1975 to 1984. Another aspect of the matter which goes against the petitioner is its conduct of dealing with the land in question through alleged Memorandum of Understanding with third party. The said Memorandum of Understanding is said to have been entered into on 14.10.1996 much after the declaration under Sec. 52(1) of the Act on 8.2.1984. Of course, the parties now appear to have fallen apart on the said issue and that is clearly outside the scope of present writ petition. But the fact remains that the effort of the petitioner company to deal with the land in

question through such methods can hardly be appreciated. As far as the contention of petitioner that in 1977, another part of adjacent land was acquired under the provisions of Rajasthan Land Acquisition Act, 1953 and the proceedings were completed within one year, is of hardly any relevance in the present case because the land acquisition in the present case is under the Act of 1959 and that has to be examined under the provisions of said Act of 1959 alone.

25. It is also appropriate to mention here that definition of word 'improvement' as extracted above, is wide enough to cover the public purpose mentioned in the impugned notices/notification and it was not necessary for the State to pre-notify the entire detailed scheme for development of said land in question as was held by Hon'ble Supreme Court in Pratap's case (supra). As far as the contention of petitioner and applicant-intervenor that Award having not been passed within two years in view

of Section 11-A of the Central Law, proceedings should be held to have lapsed, suffice it to say that the said contention cannot be sustained in view of clear provisions of Section 60-A(4) of the Act inserted by amending & Validation Act,1990 after the Division Bench decision in the case of Bishambhar Dayal (supra) and validity of such amending law being not under challenge before this court. These validation provisions were also considered in detail by Hon'ble Supreme Court in Pratap's case (supra), therefore, in view of law laid down by Hon'ble Supreme Court in the said case, this contention must also fail.

26. Consequently, this writ petition has no substance and deserves to be dismissed and accordingly it is hereby dismissed. The parties shall bear their own costs.

(DR.VINEET KOTHARI)J.

s.rawat/-